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Stephen Todd

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EMC CORPORATION

c/o DALY, CROWLEY, MOFFORD & DURKEE, LLP

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/024,796
Filing Date: December 19, 2001
Appellant(s): TODD ET AL.

Anthony T. Moosey
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 18, 2009 appealing from the Office action mailed Nov, 20, 2008.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,884,284

Peters et al.

3-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

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DETAILED ACTION

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-22 are rejected under 35 U.S.C 102(e) as being anticipated by Peters et al. (Peters hereinafter) US Patent NO. 5,884,284 filed Aug. 6, 1997. Issued March 16, 1999. Applicant is advised to consider the reference as a whole.

Regarding Claims 21, 1, and 22, Peters discloses a method, apparatus, and computer program product residing on a computer-readable medium for managing workflows in a service provider environment in which a service provider provides data storage resources to a customer, the computer program product comprising instructions causing a computer to:

provide a the customer with a list of types of work order requests to select work to be performed (Col. 19, lines 4-9, wherein the choices provided to the user corresponds to the list of types of work orders, Peters) based on a permission level defining a level of access to the data storages resources allowed to associated with the customer (Col. 5, lines 39-42, Peters), the work order requests comprising requests to manage configuration of the data storage resources provided to the customer(Col. 5, lines 42-46, Peters), wherein the types of work order requests comprise at

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least one of requests to (Col. 7, lines 44-51, wherein the method of displaying all functions corresponds to list of the types of work order requests, Peter):

create a mirror;

restore remote mirroring (Col. 10, lines 22-29, wherein the method of allowing the user to access, modify and update the work order remotely corresponds to the claimed limitation, Peter); or

receive a selection of a type of work order request from the customer prior to performance of work associated with the selection (Col. 5, lines 55-60, wherein the cited numerous options corresponds to the selection claimed, Peters):

enable the customer to generate a work order request of the selected type in a work order request submission (Col. 7, lines 44-48, wherein the variety of reports and bills are generated, and col. 8, lines 47-46-50, wherein the user is enable to view, modify and update in other words generate a report, Peters);

create a database object based on the work order request; and
store the database object in a database (Col. 19, lines 20-21, Peters).

Regarding Claim 2, Peters discloses a method, wherein enabling comprises:

providing to the customer at least one task screen corresponding to the selected type of work order request and usable by the customer to generate the work order request (Col. 9, lines 17-27, Peters).

Regarding Claim 3, Peters discloses a method, wherein the work order request comprises values of parameters specific to the selected type of work order request (Col.

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9, lines 35-42, wherein the functions including billing, messages, function which corresponds to the values of parameters specific type, Peters).

Regarding Claim 4, Peters discloses a method, wherein the database object comprises elements that include a customer identifier and the selected type of work order request (Col. 9, lines 49-56, wherein the order information corresponds to the element including customer identifier, Peters).

Regarding Claim 5, Peters discloses a method, wherein the elements further include a state to indicate status of the work order request (Col. 9, lines 51-56, wherein the work order discloses the status of the work order such as cancel work, modify order which corresponds to the claimed state to indicate the status, Peters).

Regarding Claim 6, Peters discloses a method, wherein the state is set to indicate a new" work order request initially and later changed to indicate a closed work order request (Col. 10, lines 30-36, Peters).

Regarding Claim 7, Peters discloses a method, further comprising:

assigning a work order request identifier to the work order request (Col. 13, lines 1-11, wherein the command for report function corresponds to the work order request identifier, Peters); and

providing the assigned work order request to the customer (Col. 13, lines 44-51, Peters).

Regarding Claim 8, Peters discloses a method, wherein the database object is stored in the database as a table entry (Fig. 3, step 122, Peters), the table entry

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including fields to store information associated with each of the elements (Fig. 4, Peters).

Regarding Claim 9, Peters discloses a method, wherein the elements further comprise the assigned work order request identifier and the work order request is stored in one of the fields in the table entry (Fig. 4, step 142, Peters).

Regarding Claim 10, Peters discloses a method, further comprising:

processing the work order request using the table entry, processing comprising attempting to perform any tasks required to satisfy the work order request (Col. 16, lines 6-12, Peters); and

updating the state based on the results of the processing (Col. 9, lines 50-56, Peters).

Regarding Claim 11, Peters discloses a method, wherein updating comprises:

marking the state to indicate that the work order request is closed if such tasks are performed successfully (Col. 10, lines 40-44, Peters); and

marking the state to indicate a failure if such tasks are not performed successfully; (Col. 10, lines 33-34, wherein the “delete miscellaneous jobs which are not related to work order corresponds to the limitations of failure if such tasks are not performed successfully, Peters).

Regarding Claim 12, Peters discloses a method, further comprising:

generating a billable event when the work order request is closed (Col. 29, lines 3-10, Peters); and

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storing the billable event in the database in association with the customer identifier and account information (Col. 29, lines 11-17, Peters).

Regarding Claim 13, Peters discloses a method, wherein work order request submission is in the form of an email (Col. 5, Lines 2-6, Peters).

Regarding Claim 14, Peters discloses a method, wherein work order request submission is in the form of HTTP (Col. 15, lines 33-35, wherein the “on-line” corresponds to the HTTP since it is an on line service, Peters).

Regarding Claim 15, Peters discloses a method, wherein processing is managed by a workflow automation that periodically queries the database to locate any new work order requests based on the state in the table entry for each work order request (Col. 15, lines 61-64, wherein the automatic update corresponds to the claimed periodically queries the database to locate any new work order requests based on the state in the table entry for each work order request, Peters).

Regarding Claim 16, Peters discloses a method, wherein the processing, updating, and the generating and storing of the billable event are handled by the workflow automation (Col. 30, lines 39-46, Peters).

Regarding Claim 17, discloses a method, wherein the workflow automation invokes other processes needed to perform the work order request (Col. 29, lines 23-50, the cited functions are used to perform the work order, Peters).

Regarding Claim 18, Peters discloses a method, wherein processing is managed manually by an administrator of the service provider (Col, 5, lines 38-43, Peters).

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Claim 19, Peters discloses a method, wherein the processing, updating, and the generating and storing of the billable event are handled manually by the service provider administrator (Col. 5, lines 38-48, Peters).

Regarding Claim 20, Peters discloses a method, wherein the processing, updating, and the generating and storing of billable events are managed manually by the service provider administrator when the state indicates a failure (Col.10, lines 22-36, Peters).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 rejected under 35 U.S.C. 103(a) as being unpatentable over Peters et al. (Peters hereinafter) US Patent NO. 5,884,284 filed Aug. 6, 1997. Issued March 16, 1999. in view of Bromley et al (Bromley hereinafter) US Patent No. 7,099,900 filed Sep. 13, 2001. Applicant is advised to consider the reference as a whole

Regarding Claim 23, Peters discloses all the limitations as stated above. However, Peters is silent with respect to the use of the "list of the types of work order requests further comprises request to split a business continuance". On the other hand Bromley discloses the list of the types of work order requests further comprises request to split a business continuance at Col. 7, lines 26-35. it would have been obvious to one

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of ordinary skill in the art at the time of the invention was made to incorporate the use of BCV in the Peters system. Skilled artisan would have been motivated to make such modification to Peter's system to backup the data in case of disaster, since it is well known in the art that the BCV system is used to back up data in case of fire or disasters.

(10) Response to Argument

It is a well settled rule that a reference must be considered not only for what it expressly teaches but also for what it fairly suggests. See *In re Burckel*, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979) and *In re Lamberti*, 545 F.2d 747, 192 USPQ 278 (CCPA 1976) as well as *In re Bode*, 550 F.2d 656, 193 USPQ 12 (CCPA 1977) which indicates such fair suggestions to unpreferred embodiments must be considered even if they were not illustrated. Additionally, it is an equally well settled rule that what a reference can be said to fairly suggest relates to the concepts fairly contained therein, and is not limited by the specific structure chosen to illustrate such concepts. See *In re Bascom*, 230 F.2d 612, 109 USPQ 98 (CCPA 1956).

Appellant arguments filed 9/11/08 with respect to claims 1-23 have been fully considered but they are not persuasive.

Appellant argues the reference fails to disclose "a list of the types of work order requests includes at least one request to create a mirror or to restore remote mirroring (see for example page 11, lines 18 to 26 of applicant's specification)".

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Examiner disagrees. The Peters reference as shown in Col. 6, lines 32-37 wherein other database are maintaining alternate address, work orders, service order, jobs etc, corresponds to the argued limitations, Peters at Col. 3, lines 59-65 and Col. 4-5, lines 63-67, and lines 1-4 respectively, clearly discloses the user database which is different than the central database shown in Col. 5, lines 1-4, and since the user sign up with user ID and password it is clearly shows that the user is remote to the central database.

Applicant argues the "Examiner had ignore the word 'mirroring'".

Examiner disagrees. Peters at Col. 8, and 9, lines 66-67, and 1-4 respectively discloses the method of storing and **duplicating** which is as defined by the applicant is a mirroring. Further more the Peter reference discloses at Col. 15, lines 1-7, output to an output device the copying to an output device corresponds to creating a mirror since it is a copy of the actual document saved in a different location, the method of printing to a print device is duplicating or mirroring a copy of the document in a dedicated user terminal which is different than the central database.

Appellant argues the "Peters does not disclose or suggest the work order requests include requests to manage configuration of the data storage resource provided to the customer".

Examiner disagrees. The cited portion of Peters discloses the method of allowing the system administrator to choose to allow different levels of access to the application corresponds to the method of manage configuration since changing the level

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of access means changing the configuration. Further more Peters at Col. 4, lines 5-18, disclose the configuration management.

Appellant argues the examiner is alleging that a report is a work order request.

Examiner disagrees. The work order is disclosed in the reference discloses the work order as shown in more than one citation such as Col. 6, line 66.

Appellant argues first the reference does not disclose a "work order" and in the following argument appellant argues the "work order" disclosed by the reference is not the same "work order" as claimed.

Examiner disagrees. First the reference discloses the work order as claimed. Second the usage of the work order may be different than the claimed work order and that is the intended use of the work order which carry no patentable weight.

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(11) Related Proceeding(s) Appendix

A conference was held on August 19, 2009 the conferees Pierre Vital SPE, James Trujillo SPE, Sana AL-Hashemi Primary Examiner.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

SA

Conferees:

/Sana Al-Hashemi/
Primary Examiner, Art Unit 2156

/Pierre M. Vital/
Supervisory Patent Examiner, Art Unit 2156

/James Trujillo/
Supervisory Patent Examiner, Art Unit 2159